



**Rule(s) Review Checklist Addendum**  
(This form must be filled out electronically.)

**This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.**

All responses should be in **bold** format.

Document(s) Reviewed (include title): **WAC 458-20-175 (Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce.)**

Date last reviewed: **July 19, 2000**

Reviewer: **Mark Mullin**

Date current review completed: **April 29, 2003**

Briefly explain the subject matter of the document(s):

**WAC 458-20-175 (Rule 175) explains that persons engaged in the business of operating as a private or common carrier by air, rail, or water in interstate or foreign commerce are not subject to business and occupation (B&O) or public utility taxes. Rule 175 provides information about how retail sales and use taxes apply to purchases made by such persons, including information about the sales tax exemptions provided by RCW 82.08.0261 and 82.08.0262 and information about the use tax exemption provided by RCW 82.12.0254. The rule also provides information about the B&O tax deduction for sales of fuel for consumption outside the territorial waters of the United States by vessels used primarily in foreign commerce.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Public requests for review:**

YES	NO	
	<b>X</b>	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

**2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs:** (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
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X		Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
	X	Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
X		Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
X		Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

**RCW 82.12.0254 was amended by chapter 5, Laws of 2003, to provide a use tax exemption for the use of labor and services rendered in respect to the repairing, cleaning, altering, or improving any airplane, locomotive, railroad car, or watercraft used primarily in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire. This statutory change should be incorporated into Rule 175.**

**Information from the following BTA decision and WTD issued after the previous review should be incorporated into the rule:**

- *Olympic Tug and Barge, Inc. v. Dep't of Rev.*, BTA Docket No. 55558 (2001) (whether taxpayer is liable for retail sales and use taxes on its acquisition and use of watercraft used to transport bunker fuel).
- Det. No. 00-057, 19 WTD 986 (2000) (whether taxpayer is liable for retail sales and use taxes on its acquisition and use of watercraft used to transport bunker fuel).

**Information from the following WTDs should be incorporated into the rule in addition to those WTDs identified in the previous review:**

- Det. No. 94-226, 15 WTD 65 (1995) (company which provides charter services, flight training services, and aircraft maintenance services protests assessment of use tax on its aircraft).
- Det. No. 93-139E, 13 WTD 278 (1994) (are rail car repair charges exempt from retail sales tax under RCW 82.08.0262, if the rail cars are leased by a railroad and subsequently used by the railroad to transport property for hire; and is use tax due on



switch engines or component parts of switch engines that are used to conduct switching activity that occurs wholly within the state of Washington).

- **Det. No. 91-323ER, 13 WTD 39 (1993)** (petition for refund of sales and use taxes paid on vessels purchased/leased and used by taxpayer wholly within Washington waters to assist and escort other vessels moving property in interstate and foreign commerce).

**3. Additional information:** Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

**This rule can be rewritten and reorganized in a more clear and concise manner. In this regard, it may be more user-friendly to eliminate the definition section and incorporate the definitions throughout the rule as appropriate, possibly in a question and answer format. Also, it may be useful to define or explain the meaning of the term "common carrier."**

**This rule could be improved by the addition of examples, possibly derived from the documents identified in this and the previous review as containing information that should be incorporated into the rule.**

**4. Listing of documents reviewed:** The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use "bullets" with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

- ***Olympic Tug and Barge, Inc. v. Dep't of Rev.*, BTA Docket No. 55558 (2001)** (whether taxpayer is liable for retail sales and use taxes on its acquisition and use of watercraft used to transport bunker fuel).
- ***Wilbert v. Dep't of Rev.*, BTA Docket No. 98-83 (2000)** (whether a yacht purchased in Washington and intended to be used in the marine charter business in Canada is exempt from use tax under RCW 82.12.0254).



Appeals Division Decisions (WTDs):

- **Det. No. 00-057, 19 WTD 986 (2000) (whether taxpayer is liable for retail sales and use taxes on its acquisition and use of watercraft used to transport bunker fuel).**
- **Det. No. 98-029, 19 WTD 742 (2000) (is a Lear jet, owned by a Washington corporation and used to transport corporate executives and clients to and from its Washington headquarters and interstate locations, exempt of use tax, if hangared in Oregon).**
- **Det. No. 93-139E, 13 WTD 278 (1994) (are rail car repair charges exempt from retail sales tax under RCW 82.08.0262, if the rail cars are leased by a railroad and subsequently used by the railroad to transport property for hire; and is use tax due on switch engines or component parts of switch engines that are used to conduct switching activity that occurs wholly within the state of Washington).**
- **Det. No. 87-105, 3 WTD 1 (1987) (petition protesting assessment of use tax on a yacht and on the repairs and renovation of the yacht)**
- **Det. No. 83-283, 11 WTD 9 (1983) (taxpayer, who conducts interstate and international boat excursions as a common carrier of persons for hire, protests assessment of deferred sales tax on cruise brochures).**

Attorney General Opinions (AGOs): **None.**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed): **None.**

**5. Review Recommendation:**

- X**              **Amend**
- Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

**Explanation of recommendation:** Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).



**I generally concur with the recommendations in the previous review of this rule. Rule 175 should be amended to incorporate recent legislation and consolidate information contained in the ETAs, WTDs, and other documents identified in this and the previous review. This rule should also be amended to reorganize the information so that is provided in a more user-friendly format.**

**The previous review recommended that all of the exemption certificates be eliminated in the rule and a reference to the Department's Buyer's Retail Sales Tax Exemption Certificate be added. If this recommendation is to be adopted, the Buyer's Retail Sales Tax Exemption Certificate may need to be revised.**

**6. Manager action:** Date: 4/28/03

AL Reviewed and accepted recommendation

Amendment priority:

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